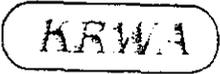


## KINGS RIVER FISHERIES MANAGEMENT PROGRAM FRAMEWORK AGREEMENT



**THIS FRAMEWORK AGREEMENT** is made and effective as of May 28, 1999 by and between the Kings River Water Association (the "Association"), the Kings River Conservation District (the "District") and the State of California, acting by and through the California Department of Fish and Game (the "Department"), and is made with reference to the following facts:



A. Fish and Game Code Section 711.7 provides that the fish and wildlife resources of the State are held for the people in trust by and through the Department. Fish and Game Code 1802 provides that it is the policy of the State to encourage the preservation, conservation and maintenance of those trust resources, and other sections of that Code empower the Department to manage the natural and introduced fish and wildlife populations of the State. Accordingly, the Department, as trustee, has the responsibility and authority (subject at all times to existing laws) to determine and implement those measures it believes will best conserve the public trust resources under its jurisdiction. Further, the Fish and Game Commission is empowered, to the extent specified in existing laws, to make regulations for the protection of fish and wildlife, which are enacted and enforced by and through the Department. Section 1017 of the Fish and Game Code specifically empowers the Department to consult with other parties in order to further the purposes of that Code, including the preservation, conservation and maintenance of the public trust resources managed by the Department.



B. The Association was formed in 1927 and now consists of 28 public and private agencies holding the vested rights to the waters of the Kings River. By virtue of agreements between its members, the Association is obligated and empowered to preserve and protect the vested rights and interests in the waters of the Kings River held by its members. In accordance with agreements between its members and pursuant to those members' vested water rights, the Association is empowered to, among other things: (i) allocate the natural flow of the Kings River and the storage space within Pine Flat Reservoir, as available, among its members, (ii) make, measure, and report on water deliveries to its members, (iii) negotiate certain agreements and memoranda of understanding on behalf of its members pertaining to Kings River operations, and (iv) ensure compliance of all Kings River water operations, except flood control operations, with the internal agreements of its members.

C. The District is a public agency created in 1951 by virtue of the Kings River Conservation District Act. The District was formed to act as the local agency responsible for the operation and maintenance of the Corps of Engineers flood control project downstream from Pine Flat Dam so as to allow for the safe passage of flood waters in the Kings River channel. Further, the District was licensed in 1979 by the Federal Energy Regulatory Commission to construct and Operate the Pine Flat

Hydroelectric Project, an electrical power generating project owned by the District located at Pine Flat Dam. Such project has no attendant water storage or consumptive use rights, and as such, operates conjunctively with water storage behind and releases from Pine Flat Dam for other purposes. The district has responsibility to operate the project in a manner consistent with the Federal license, including specific conditions relating to fish and other aquatic resources imposed by said license.

D. On September 11, 1964, the Association and the Department entered into that certain Agreement (the "1964 Agreement") providing for, among other things, minimum releases from Pine Flat Dam, minimum flows in the Kings River below Pine Flat Dam at specified locations and other matters relating to fish and wildlife resources associated with the Kings River below Pine Flat Dam. By its express terms, the 1964 Agreement was intended to make permanent provision for the operation of Pine Flat Dam and the associated facilities in the interest of the existing fish and wildlife resources in and adjacent to the Kings River. Nevertheless, it is the policy of the Association and the District that efforts to address environmental issues should be ongoing, consistent with the need for reliability and certainty of Kings River water supplies and flood control operations. As a result, the Association and the District have continued an open dialogue with the Department concerning management of Kings River resources and have, in cooperation with the Department, undertaken numerous projects intended to improve the fish and wildlife resources associated with the Kings River below Pine Flat Dam since 1964.

E. Most recently, the Association, the District and the Department have actively and in good faith pursued the development of a comprehensive program (referred to as the Kings River Fisheries Management Program) to further enhance the broad range of fish and wildlife resources associated with the Kings River and Pine Flat Reservoir (the "Program"). The principles underlying the development of the Program were initially set forth in a Statement of Intent executed by the Association, the District and the Department on August 1, 1994, and have been substantially refined through intensive study and analysis since that time. The parties now anticipate that the Program will ultimately involve (i) changes in the operation of Pine Flat Dam and related facilities, (ii) the establishment of a temperature control pool in Pine Flat Reservoir, (iii) enhanced releases for fisheries purposes from Pine Flat Dam, (iv) the installation of new facilities for fish and wildlife purposes at Pine Flat Dam and in the Kings River, (v) a rigorous program of law enforcement, fish stocking and monitoring, and (vi) other physical and non-flow related elements intended to protect or enhance fish populations or improve aquatic habitat quality within Pine Flat Reservoir and the Kings River below Pine Flat Dam. The parties jointly acknowledge that the Program is an enhancement program which will, among other benefits, extend trout habitat suitability throughout the year in most years and for longer periods in every year than existed historically. The Program is intended to create a partnership between the parties officially recognized and designated to act on behalf of the public relative to the aquatic resources of the Kings River, and to provide each of the parties flexibility while ensuring meaningful enhancement of the fish and wildlife resources of the Kings River.

F. The parties recognize that the entire Program cannot be finalized or fully implemented until, among other things, (i) substantial additional information has been collected, (ii) funding and other commitments have been obtained from or through the Department, and (iii) mechanisms have been developed by the members of the Association to supply any water required for the

Program over and above that committed herein. Nevertheless, the parties believe that they have made substantial progress in the development of the Program and wish to formalize the elements of the Program on which they have reached agreement to date in order to establish a framework for the Program and to facilitate further development of the Program in accordance with those agreements.

G. The parties wish to begin implementation of the Program to the maximum extent now feasible, and believe that phased implementation will provide them with valuable information about the effect of individual Program elements on the fish and wildlife resources of the Kings River. Accordingly, while the Program is not yet final, the parties wish to provide for the early implementation of certain elements of the Program pending the development of the remaining elements of the Program.

THEREFORE, the Association, the District and the Department agree as follows:

1. Program Elements. Recognizing that some elements of the Program have not yet been fully developed, the Program will include at least the following elements:

- (a) Kings River Aquatic Resource Goals. The Program will be implemented to achieve the multi-species aquatic resource goals described on the attached Exhibit A.
- (b) Adaptive Management. The Program will be further developed, implemented and managed in accordance with the attached Exhibit B (the "Adaptive Management Procedures"). All provisions of the Adaptive Management Procedures are hereby adopted by the parties. The Adaptive Management Procedures represent a framework for addressing fish and wildlife resource issues on the Kings River, and may be separately amended by the written agreement of the parties without the need to amend this Framework Agreement or the Program. As provided in the Adaptive Management Procedures, all aspects of Program development, implementation and management will be based on the best available scientific and technical information and will be responsive thereto. Program development, implementation and management will also proceed with appropriate public participation and involvement, and the parties specifically contemplate that the Adaptive Management Procedures may be amended to facilitate such public participation and involvement.
- (c) Temperature Control Pool. Subject to (i) reaching an agreement acceptable to the Association's members on the maintenance of additional storage in Pine Flat Reservoir with Pacific Gas & Electric Company or (ii) the development of other arrangements acceptable to the Association's members which will permit the maintenance of such storage, the members of the Association will operate to maintain storage in Pine Flat Reservoir of not less than 100,000 acre feet, subject to conditions beyond the reasonable control of the Association or its members which would make it impossible to maintain such storage. It has been suggested that the best interests of Kings River fish and wildlife resources may be served by permitting that storage level to be temporarily reduced below 100,000 acre feet to provide flows for temperature maintenance downstream of Pine Flat Dam in certain circumstances, and the parties

will continue to discuss whether and how such temporary reductions should be allowed and/or implemented; provided, that in no event will the storage in Pine Flat Reservoir be permitted to remain below 100,000 acre feet for longer than 120 days following any such temporary reduction.

- (d) Stream Temperatures. Utilizing the enhanced flows described on the attached Exhibit C, the members of the Association will use good faith efforts to maintain water temperatures from Pine Flat Dam to the Fresno Weir suitable for trout in furtherance of the applicable Kings River Aquatic Resource Goals described on the attached Exhibit A. However, the parties acknowledge that there may be infrequent circumstances in which the natural conditions of the Kings River prevent those goals from being achieved, notwithstanding the efforts of the Association and its members. Should that occur, the parties will jointly engage in targeted effort at the earliest opportunity permitted by the circumstances to recover any losses to the Kings River fishery resulting from the nonachievement of those goals. The parties also understand and agree that the physical and economic feasibility of temperature management of releases from Pine Flat Dam will be limited unless and until certain facilities at Pine Flat Dam which will permit such temperature management (more specifically, a turbine bypass line and a multi-level intake structure) are installed.
- (e) Enhanced Flows. The members of the Association will operate to achieve increased minimum flows in the Kings River below Pine Flat Dam. Initially, those flows will be at the levels set forth on the attached Exhibit C and will be measured at Fresno Weir and Dennis Cut, as appropriate. The members of the Association will diligently endeavor to increase those minimum flows to the levels and at the locations set forth on the attached Exhibit D by October 1, 2005 to the extent the best available science demonstrates that such flows are required to achieve the goals of the Program. The parties recognize that achieving the Exhibit D flows will require the development and implementation of programs to provide the additional water required in a manner that avoids unacceptable impacts to beneficial water uses or injury to Kings River water users. Prior to providing Exhibit D flows, the members of the Association will exploit, when possible, opportunities to provide (on a temporary basis) higher flows than those set forth on Exhibit C to the extent (i) the best available science demonstrates that the goals of the Program will be advanced thereby and (ii) such flows can be provided without unacceptable impacts to beneficial water uses or injury to Kings River water users.
- (f) Funding/Projects. The Association and the District will collectively provide \$100,000 per year (in cash, in kind services, or a combination of both) for ten years commencing upon the execution of this Framework Agreement to design, install, operate and maintain selected physical improvements to the Kings River below Pine Flat Dam (including without limitation the creation of spawning sites, fish passage facilities, and fish habitat improvements) which will enhance fish and wildlife resources and the public's enjoyment thereof, all where appropriate, feasible and consistent with Corps of Engineers flood control requirements. The Department desires to participate in the funding of those projects at a level comparable to that

collectively provided by the Association and the District. Recognizing that the Department cannot commit funding from the State Legislature in the absence of an authorization and appropriation, to the extent legally permitted, the Department will diligently seek appropriations, grants and other sources of funding for at least \$1,000,000 during that same ten-year period, the proceeds of which will be additive to the funding provided by the Association and the District and used for the same purposes. Private parties with interests in the Kings River fishery and/or recreation-based economy will be approached about additional funding mechanisms for specific program elements. All annual funding and project selection will be managed in accordance with the procedures and protocols set forth in the Adaptive Management Procedures attached as Exhibit B. All funding and services provided pursuant to this Section 1(f) will be in addition to funding and services routinely provided by each of the parties prior to the execution of this Framework Agreement.

- (g) Rates of Change of Flow at Low River States. When releases from storage in Pine Flat Reservoir are being made at a rate of 300 cubic feet per second or less, changes in the rate of release will not exceed the following:

<u>Rate of Release Prior to Change</u>	<u>Maximum Increase in Any One-hour Period</u>	<u>Maximum Decrease in Any One-hour Period</u>
51 - 100 cfs	40 cfs	20 cfs
101 - 150 cfs	50 cfs	25 cfs
151 - 200 cfs	75 cfs	30 cfs
201 - 250 cfs	100 cfs	35 cfs
251 - 300 cfs	100 cfs	40 cfs

- (h) Corps of Engineers Studies/Turbine Bypass Line. In addition to the funding described in Section 1(f), the Association and the District intend to continue to pay the local share of (i) the cost of studies (as scoped as of the date of this Framework Agreement) now being conducted by the United States Army Corps of Engineers to identify fishery enhancement programs on the Kings River (which local share is currently estimated to be approximately \$1,000,000) and (ii) the installation of a turbine bypass line at Pine Flat Dam under the authority of Section 1135 of the Water Resources Development Act (which local share is now estimated to be approximately \$1,250,000). Notwithstanding the payment of such amounts by the Association and the District, the Department will use good faith efforts to obtain funding to be contributed to the local share of such projects in addition to its obligations under Section 1(f).
- (i) Enforcement Education and Awareness Program. The Department, in consultation with the Association, the District and appropriate local fishing organizations and public agencies, will (i) gather information about the resource-related law enforcement needs of the Kings River below Pine Flat Dam and (ii) develop and implement a comprehensive and effective program of law enforcement on the Kings River below Pine Flat Dam designed to provide resource protection and public safety

through compliance with all applicable laws and regulations. The parties acknowledge that the operations plan included in that law enforcement program must and will remain confidential to the Department. However, at a minimum, the program will include a targeted public information campaign directed at improving public awareness and compliance, improved signage on the Kings River setting forth relevant restrictions, enforcement activities as necessary to address identified law enforcement problems, and coordination with local fishing groups. The Department will evaluate and redirect its law enforcement program from time to time to address changes in the Kings River fishery and its utilization. The cost of enforcement will be borne by the Department.

- (j) Stocking Program. The Department, in consultation with the Association, the District and appropriate local fishing organizations, will develop and implement a focused supplemental trout stocking program for Pine Flat Reservoir and the Kings River below Pine Flat Dam, consistent with the Kings River Aquatic Resource Goals attached as Exhibit A. That program will be designed to provide an attractive trout fishery and will emphasize (i) stocking in the main channel of the Kings River and channels which flow into or out of the main channel and (ii) planting "put and grow" sub-catchable fish and eggs which can mature into a sustaining population of adult fish whenever appropriate. The supplemental stocking program described in the preceding two sentences will be in addition to all existing stocking programs in Pine Flat Reservoir and in the Kings River below Pine Flat Dam, including existing programs of stocking "put and take" fish to provide recreational angling opportunities. The costs of the supplemental stocking program will be borne by the Department; provided that if, despite the Departments good faith efforts, that program is not adequately funded by the Department, the Association and the District may make contributions through the Adaptive Management Procedures to the costs of the program from the annual funds which would otherwise be provided by the Association and the District pursuant to Section 1(f).
- (k) Development of Criteria/Monitoring. In consultation with appropriate experts and local fishing organizations, objective criteria will be developed to determine the health and status of the fishery in the Kings River below Pine Flat Dam. Thereafter, the Department, the Association and the District will diligently carry out a monitoring program to determine the effects of various elements of the Program and the overall status of the fishery in the Kings River below Pine Flat Dam. In addition, the Department, the Association and the District will develop and implement a flow monitoring program to confirm that the requirements of the Program are being satisfied. That aspect of the monitoring program will involve the establishment of new flow measurement stations in the Kings River, including measuring stations equipped with continuous water stage recorders suitable for measuring (i) minimum flow in Dennis Cut at a location immediately below the Dennis Cut control structure and (ii) minimum flows passing over the Fresno Weir in the main channel of the Kings River. The construction and installation costs of all new flow measurement stations will be paid from the funding provided by the parties pursuant to Section 1(f) and/or credited against the funding obligations under Section 1(f) of the party incurring

them. Other monitoring stations or devices will be installed as determined in accordance with the Adaptive Management Procedures attached as Exhibit B. Without limiting the foregoing it will be a goal of the Program to install a measuring station capable of measuring low flows in the main channel of the Kings River near Highway 180 in recognition of the public interest in the fishery between Fresno Weir and Highway 180; provided, that the parties recognize that channel configuration and other factors may make such a station difficult to design and install. Each party will bear its own ongoing monitoring expenses. However, if so determined in accordance with the Adaptive Management Procedures, some or all of such expenses may be paid from the funding provided by parties pursuant to Section 1(f) and/or credited against the funding obligations under Section 1(f) of the party incurring them. All final monitoring results will be available to the public.

- (l) Regulations. The Department, in consultation with the Association, the District, appropriate local fishing groups and the public, will examine the desirability of new fishing regulations on the Kings River, including without limitation the imposition of fishing seasons and further restrictions on harvest and fishing equipment used. If new regulations are determined by the Department to have the potential to improve or preserve the enhanced trout fishery in the Kings River below Pine Flat Dam and/or the public's enjoyment thereof, the Department will diligently seek to cause those regulations to be prepared and adopted by the California Fish and Game Commission.
- (m) Permitting. To the extent legally permissible, the Department will (i) cooperate with and assist the Association and the District in expediting and obtaining all necessary permits and consents to carry out the Program, and (ii) waive all fees imposed by the Department in connection therewith.
- (n) Public Education/Involvement. It is the mutual desire of the Association, the District and the Department to involve members of the public in the implementation and development of Program elements. Therefore, upon the execution of this Framework Agreement and continuously throughout the term of the Program, the Association, the District and the Department will engage in public awareness and education activities relative to the Program, provide regular opportunities for representatives of affected sectors of the public to review and comment on the Program and its implementation, and provide a means for the Association, the District and the Department to consider public input received, all as a part of the Adaptive Management Procedures. Among other public education programs, subject to available funding, the parties will explore the engagement of an on-site public information officer assigned to further the public's enjoyment and understanding of the Kings River below Pine Flat Dam and the associated resources.
- (o) Chemical Treatment. Chemical treatment of Pine Flat Reservoir will not be a part of the Program, and neither the Association nor the District will pursue that treatment so long as the parties have assurances that the claimed existence of white bass or other species in the reservoir or Kings River will not cause changes in Kings River operations or implementation of the Program which are unacceptable to the

Association and/or the District. In the absence of those assurances, or in the event the existence (or alleged existence) of white bass or other species in Pine Flat Reservoir or the Kings River poses a foreseeable threat to historic Kings River operations or the implementation of the Program, chemical treatment of Pine Flat Reservoir may again be pursued.

- (p) Access. The Department, the Association and the District will work cooperatively to develop mutually acceptable programs to improve public access to the Kings River for fishing and other recreational pursuits.

2. 1964 Agreement. This Framework Agreement will supercede the 1964 Agreement in its entirety; provided, that upon suspension or termination the Program, the 1964 Agreement will thereupon again become effective, and the parties will resume enforcement thereof. However, no such suspension or termination will occur until the procedures for resolving conflicts set forth in the Adaptive Management Procedures have been completed.

3. Corps of Engineers. As an important adjunct to the Program, the parties will, to the maximum extent permitted by law, cooperate in and support the following aspects of the United States Army Corps of Engineers' Pine Flat Restoration Studies, to the extent each party determines them to be prudent, feasible and consistent with the express goals of this Framework Agreement: (i) expedited authorization and construction of the turbine bypass line, (ii) implementation of the Mendota Wildlife Area-Kings River Water Exchange, (iii) development of the wildlife habitat restoration projects identified by the Corps studies, and (iv) completion of the feasibility studies for raising Pine Flat Dam and installing a multi-level intake structure thereon. The parties recognize, however, that except for the construction of the turbine bypass line, the costs of constructing and implementing the projects subject to the Corps studies are likely to be significantly in excess of the payment capacity of the parties without substantial contributions of non-reimbursable funding and voter approval of long-term financing.

4. Interim Implementation. The parties acknowledge their commitment to the August 1, 1994 Statement of Intent and the Program as described in this Framework Agreement, and agree that the Program should be implemented to the extent possible notwithstanding the need for further detail and refinement. Therefore, subject only to the receipt of any required governmental consents, they agree to implement the Program as described herein upon the execution of this Agreement, with the express understanding and agreement that the Program will be modified and refined over time. Implementation of elements of the Program not described in this Framework Agreement will be accomplished through appropriate amendments of this Framework Agreement, and implementation of the final Program will be accomplished through the execution of appropriate documents by all of the parties describing the final Program and permanently replacing the 1964 Agreement. The parties also acknowledge that full implementation of the final Program, and implementation of some elements of the Program as set forth in this Framework Agreement, may require approval of other governmental agencies, and they will cooperate to obtain all necessary approvals. The parties recognize their reciprocal and mutual obligations under the Program as set forth above, and therefore agree that if a party does not discharge its obligations as set forth in this Framework Agreement or otherwise in the Program, the Program will be suspended until such obligations have been satisfied; provided, that no such suspension

will occur until the procedures for resolving conflicts set forth in the Adaptive Management Procedures have been completed.

5. Public Involvement. The parties will approach local fishing organizations, and particularly those parties with pending public trust complaints before the State Water Resources Control Board ("SWRCB"), and solicit their input in and support for the Program. Without limiting the foregoing, in addition to the public involvement opportunities provided by the Adaptive Management Procedures, the parties will jointly facilitate the creation of a public advisory group with membership offered to all interested parties and ensure that a duly authorized representative of that group is afforded the opportunity to address all public meetings held in accordance with the Adaptive Management Procedures. In addition, the parties anticipate that an annual operations plan for the administration of the Program will be developed each year, and they will offer the public the opportunity to participate in the development of each such annual operations plan.

6. Unintended Creation of Habitat. It is the express intent and goal of the parties that the Program will enhance and protect fish populations and improve aquatic habitat quality within Pine Flat Reservoir and the Kings River below Pine Flat Dam. The Program is not intended, and will not be implemented or managed, to create habitat for non-aquatic species or species other than those intended to be enhanced by the Program.

7. Assumptions by the Parties. The parties have adopted the Program in part to promote a greater level of certainty relative to the use and availability of Kings River water resources. The parties believe that greater certainty will benefit the public, the fisheries to be managed under the Program, the Department, the District, the Association and the Association's members. However, in order to achieve that desired certainty, important underlying conditions must remain substantially unchanged. Therefore, the parties acknowledge that, in implementing the Program they have assumed that the water supplies and operations of the member units of the Association will not materially change (other than as the result of natural conditions or the implementation of the Program), and that there will be no material change in the use of or access to water or facilities utilized by the District or the Association's members after the effective date of this Framework Agreement (other than as the result of natural conditions or the implementation of the Program). The parties have further assumed that there will be no litigation or contested administrative proceedings commenced against any of them by any party challenging the use of the waters of the Kings River or seeking to impose new restrictions on the use of Kings River water. The parties acknowledge that all such assumptions were material to their respective decisions to reach the agreements described in this Framework Agreement. In the event any of those assumptions prove to be incorrect, or upon the occurrence of any other event materially impacting such party and/or the agencies comprising such party which can be addressed through the modification of the Program or any of its elements, the parties commit to entering into negotiations in good faith and timely efforts to modify the Program and/or any appropriate elements. If after 180 days from the date a party provides notice of its desire to initiate negotiations under this Section 7 no agreement satisfactory to the parties has been reached, any of the parties may thereafter terminate this Framework Agreement.

8. The Parties' Joint Petition to the State Water Resources Control Board. The parties have mutually accepted that, as an enhancement program, the Program properly addresses public

trust values on the Kings River and is the most appropriate vehicle for balancing the competing needs and uses of the Kings River system while enhancing fish and wildlife resources associated with the Kings River. Without limiting the foregoing, in accordance with its responsibilities under Fish and Game Code Sections 711.7 and 1802, the Department believes that the Program establishes the proper vehicle to continue to conserve the public trust and to satisfy the obligations of the Association, its members and the District under Fish and Game Code Section 5937, the public trust doctrine and Water Code Section 13300, *et seq.* (the Porter-Cologne Water Quality Act). At a time to be determined by mutual agreement of the parties, they will jointly petition the SWRCB to accept the Program and agree to fully cooperate in and support the prosecution of that petition. The parties' joint petition to the SWRCB will request the SWRCB to issue such order(s) as are necessary to implement the Program, and will include a request that the SWRCB establish a schedule for providing the SWRCB with annual status reports on the progress of the Program. The joint petition will also include a request that the SWRCB order(s) expressly authorize the implementation of revisions in any feature or element of the Program adopted in accordance with the Adaptive Management Procedures upon notice to, but without further order of, the SWRCB. The Program and the Adaptive Management Procedures will automatically terminate upon the election of any party if the SWRCB declines to issue the order(s) described in this Section 8 and in Section 9 in a form satisfactory to all of the parties.

9. Disposition of the Water Rights Complaints. The petition filed by the Parties pursuant to Section 8 will include a request for an order suspending processing of (rather than dismissing) the public trust complaint filed by the Lower Kings River Committee, Inc., et. al. on April 15, 1991 relative to Kings River operations and all other similar pending complaints addressing the Kings River. Prior to preparing and filing such petition, the parties will jointly approach the complainants and request their joinder therein. The petition will request that the suspension on processing the pending complaints remain in effect until the earlier of (i) the termination of this Framework Agreement, or (ii) the issuance of an order by the SWRCB on a petition by a complainant finding one or more material but uncured breaches of this Framework Agreement by any of the parties or (iii) the dismissal of all such complaints upon motion by one or more of the complainants. Upon the occurrence of any of the events described in clauses (i) or (ii) of the preceding sentence, the parties, or any of them, may petition the SWRCB to dismiss any or all such complaints on such terms and conditions as the petitioner(s) may deem appropriate. Should the processing of any such complaints be recommended by the SWRCB, it will be deemed an event permitting the parties to invoke the provisions of Section 7 of this Framework Agreement. The election of the parties not to seek dismissal of the referenced complaints will not be deemed to be their agreement with any of the allegations contained therein.

10. CEQA Compliance. Notwithstanding any provision of the Framework Agreement or the Adaptive Management Procedures, all actions proposed as a part of the Program will be subject to any required compliance with the California Environmental Quality Act ("CEQA"). The Parties, in consultation where appropriate with the SWRCB, will determine whether and to what extent the entire Program requires (or might be subject to) programmatic CEQA compliance, and the Parties will thereafter analyze each project (as defined in CEQA) proposed to be undertaken as a part of the Program to determine what, if any, CEQA compliance is required.

11. Jurisdiction. Notwithstanding any provision of this Framework Agreement or any other aspect of the Program, nothing set forth herein or therein will be construed as expanding the jurisdiction of the SWRCB or the Department beyond that provided by California law.

12. Termination. This Framework Agreement and the Program may only be terminated (i) upon the mutual consent of the parties, (ii) by a non-defaulting party in the event of a default by any other party which remains uncured for 30 days after written notice of such default to the defaulting party, or (iii) as otherwise as expressly provided herein. Wherever possible, the parties will pursue remedies other than termination as the remedy of choice for issues, disputes, and defaults, and will utilize the dispute resolution mechanisms described in the Adaptive Management Procedures. In the event one or more of the parties elect to terminate the Program and the Adaptive Management Procedures, such termination will become effective only after 180 days written notice to all parties.

IN WITNESS WHEREOF, the parties have executed this Framework Agreement as of the date first above written.

KINGS RIVER WATER ASSOCIATION

By: Dean L. Jensen  
Chairman

KINGS RIVER CONSERVATION DISTRICT

By: Jeff J. Taylor  
General Manager

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: Robert C. Hight  
Director

**“Exhibit A”**  
**Aquatic Resource Enhancement Goals**  
**for the**  
**Lower Kings River and Pine Flat Reservoir**

**Providing for Long-Term Aquatic Resource Enhancement:**

In August, 1994, the Kings River Water Association, Kings River Conservation District and Department of Fish and Game jointly executed a Statement of Intent, regarding cooperation on fishery improvements within Pine Flat Reservoir and the lower Kings River. Among other commitments, the parties committed to: (i) support and pursue in an expeditious manner a cooperative program to improve and manage fisheries and aquatic habitat conditions; (ii) cooperatively seek and develop a broad scope of habitat improvement alternatives, emphasizing opportunities for voluntary conjunctive or sequential water uses for continued enjoyment of the full range of on-stream and off-stream beneficial uses; (iii) to minimize and, where possible, avoid adverse effects of any changes on the holders of water storage and/or use rights, and on the public who beneficially use the waters of the Kings River; and (iv) to co-sponsor projects and programs which further the purposes of the Statement of Intent.

The following Aquatic Resource Enhancement Goals identify a set of desired future conditions, for the different segments of the Kings River watershed. They are intended to serve as initial “targets” for such projects and programs as may be undertaken, in furtherance of the Statement of Intent. They should not be interpreted as requirements or standards, but rather as general guidance for programmatic decisions, with respect to divergent opportunities that may present themselves today and in the future. As such, they are likely to be adjusted to reflect changing needs, opportunities and constraints, as tempered by experience. Retaining the flexibility to adapt and refocus the program in this manner is considered desirable, for it increases the overall responsiveness and efficiency of the program.

There are known inherent conflicts among and between these goals, which will require prioritization. Such decisions will need to consider the needs of the entire scope of off-stream and on-stream river users at the time, and impart proper balance, so as to *minimize* harm. In particular, the management of the river and its channels in a manner which provides safe passage of flood-waters was the fundamental purpose in constructing Pine Flat Dam and certain downstream channel improvements. The maintenance and proper functioning of said flood management features shall therefore take precedence over these goals to enhance the fishery, to the extent it is necessary to protect life, health and property.

It is acknowledged that portions of these initial goals may not be fully realized to the satisfaction of everyone. Expectations in this process must, therefore, be reasonable, respecting the natural physical limitations imposed by the river and watershed, as well as the broad range of beneficial water uses. Finally, it is desired that aquatic resource enhancements proceed on a consensus basis; respecting the importance of communication and cooperation in the pursuit of these goals.

### ***Cooperative Strategies:***

- Consider the natural variation in water availability when establishing flow, temperature and reservoir carryover storage targets.
- Cooperate in using high-quality, up-to-date scientific information and techniques to identify desired water flows, temperatures, habitat characteristics, and reservoir storage volumes and/or the operations needed to provide them.
- Work together to balance the needs of trout fisheries, native species and reservoir fisheries with the other on-stream and off-stream beneficial uses.
- Cooperatively identify fishery management objectives which take maximum advantage of opportunities for conjunctive and or sequential uses of water
- Use consensus as the primary tool for decision-making, regarding proposed aquatic resource improvements.

### ***Planning Area Segments:***

- A: Pine Flat Reservoir: PG&E Kings River Powerhouse to Pine Flat Dam
- B: River Reach 1: Pine Flat Dam to Cobbles Weir
- C: River Reach 2: Cobbles Weir to Fresno Irrigation District Weir
- D: River Reach 3: Fresno I.D. Weir to Reedley Narrows Gauging Station
- E: River Reach 4: Reedley Narrows Gauging Station to Peoples Weir
- F: River Reach 5: Peoples Weir downstream to Empire Weir No. 2 (at Highway 41)

## **General Aquatic Resource Goals -- by River Reach**

### **A: Pine Flat Reservoir**

*Emphasis:* All-year mixed fishery opportunity

- A-1 Maintain warm-water fisheries throughout the year, with sufficient year-to-year continuity to allow for trophy size fish to survive and support angling use
- A-2 Provide seasonally stocked catchable trout fisheries in Pine Flat Reservoir each year.
- A-3 Consistent with other fishery priorities, beneficial uses and flood control requirements, seek to maintain a volume of cool and well-oxygenated water sufficient to support carryover "put-and-grow" reservoir trout fisheries from year to year, to support trophy fisheries in the reservoir and upstream
- A-4 Manage and monitor non-native fishes to provide recreational angling, in a manner consistent with: (i) protection of native fish populations, (ii) the broadest public interest, and (iii) the provisions and requirements of applicable State and Federal laws and regulations.
- A-5 Improve angler access, to the extent it can be accomplished: (i) without exercise of eminent domain authority, (ii) consistent with public safety and private property rights, and (iii) without adversely affecting fishery and/or riparian habitat values.
- A-6 Within the constraints imposed by water operations and other fisheries goals, use reasonable efforts to manage water surface elevations in Pine Flat Reservoir to provide surface stability in warm-water fish spawning seasons.
- A-7 Within the constraints imposed by water operations and without creating a risk of future endangered species conflicts, provide in-reservoir habitat improvement for warm-water fish.

### **B: River Reach 1: Pine Flat Dam to Cobbles Weir**

*Emphasis:* All-year high-yield trout fishery

- B-1 Seek to cooperatively provide habitat that is conducive to trout fisheries; including appropriate levels of conjunctive stream flow, desirable temperature regimes, satisfactory food production, usable spawning substrates and other habitat characteristics.
- B-2 Utilize supplemental trout stocking to provide intensive recreational fishing, to the extent stocked fish do not damage natural trout populations which may be present.

- B-3 Manage and monitor non-native fishes to provide recreational angling, in a manner consistent with: (i) protection of native fish populations, (ii) the broadest public interest, and (iii) the provisions and requirements of applicable State and Federal laws and regulations.
- B-4 Improve angler access, to the extent it can be accomplished: (i) without exercise of eminent domain authority, (ii) consistent with public safety and private property rights, and (iii) without adversely affecting fishery and/or riparian habitat values.
- B-5 Improve riparian habitat, water shading and aesthetics to the extent possible; to be constrained by necessary channel capacity and maintenance for safe flood-water management.

***C: River Reach 2: Cobbles Weir to Fresno Irrigation District Weir:***

*Emphasis: All-year premium-quality trout fishery*

- C-1 Seek habitat suitability and focused management (to include appropriate flows, temperatures, spawning substrates, cover and other habitat features) to promote continuous trout fisheries, characterized by trophy trout of older age-classes. Promote self-reproducing trout fisheries to the extent they can be maintained consistently with other fishery goals and Kings River beneficial uses.
- C-2 Utilize supplemental fish stocking on an as-needed basis to sustain or recover acceptable fishery quality; to the extent stocked fish do not compete adversely with naturally occurring populations.
- C-3 Develop and implement reduced-catch protective regulations to protect the self-reproducing trout stocks.
- C-4 Provide habitat and management for native species to assure their continued survival within the Kings River system.
- C-5 Manage and monitor non-native fishes to provide recreational angling, in a manner consistent with: (i) protection of native fish populations, (ii) the broadest public interest, and (iii) the provisions and requirements of applicable State and Federal laws and regulations.
- C-6 Improve angler access, to the extent it can be accomplished: (i) without exercise of eminent domain authority, (ii) consistent with public safety and private property rights, and (iii) without adversely affecting fishery and/or riparian habitat values.
- C-7 Enhance riparian habitat, water shading and aesthetics to the extent possible; to be constrained by necessary channel capacity and maintenance for safe flood-water management

### ***D: River Reach 3: Fresno I. D. Weir to Reedley Narrows Gauging Station***

*Emphasis:* Native fish maintenance and management  
Opportunistic trout angling

- D-1 Emphasize provision of habitat and management for native aquatic species to assure their continued survival in the Kings River system.
- D-2 Maintain warm-water fish populations in seasons and locations where they currently exist, to the extent they do not adversely affect native aquatic species.
- D-3 Maintain trout fisheries on an opportunistic basis, in locations where, and in seasons or years when conducive water temperatures and flows can be provided, without adversely affecting water operations, other beneficial uses, or the achievement of other (i.e., native transitional species) fishery goals.
- D-4 Utilize supplemental cool-season trout stocking on a prescriptive basis to enhance angling opportunities.
- D-5 Manage and monitor non-native fishes to provide recreational angling, in a manner consistent with: (i) protection of native fish populations, (ii) the broadest public interest, and (iii) the provisions and requirements of applicable State and Federal laws and regulations.
- D-6 Improve angler access, to the extent it can be accomplished: (i) without exercise of eminent domain authority, (ii) consistent with public safety and private property rights, and (iii) without adversely affecting fishery and/or riparian habitat values.
- D-7 Enhance riparian habitat, water shading and aesthetics to the extent possible; to be constrained by necessary channel capacity and maintenance for safe flood-water management.

### ***E: River Reach 4: Reedley Narrows Gauging Station to Peoples Weir***

*Emphasis:* Native species maintenance and protection

- E-1 Emphasize provision of habitat and management for native aquatic species to assure their continued survival in the Kings River system.
- E-2 Maintain warm-water fish populations in seasons and locations where they currently exist, to the extent they do not adversely affect native aquatic species.
- E-3 Maintain trout fisheries on an opportunistic basis, in locations where, and in seasons or years when conducive water temperatures and flows can be provided, without adversely affecting water operations, other beneficial uses, or the achievement of other (i.e., native transitional species) fishery goals.

- E-4 Manage and monitor non-native fishes to provide recreational angling, in a manner consistent with: (i) protection of native fish populations, (ii) the broadest public interest, and (iii) the provisions and requirements of applicable State and Federal laws and regulations.
- E-5 Improve angler access, to the extent it can be accomplished: (i) without exercise of eminent domain authority, (ii) consistent with public safety and private property rights, and (iii) without adversely affecting fishery and/or riparian habitat values.
- E-6 Enhance riparian habitat, water shading and aesthetics to the extent possible; to be constrained by necessary channel capacity and maintenance for safe flood-water management.

***F: River Reach 5: Peoples Weir to Empire Weir No. 2 (at Highway 41)***

*Emphasis:* Native species maintenance  
Opportunistic warm-water angling

- F-1 Maintain habitat and management for native aquatic species to assure their continued survival in the Kings River system.
- F-2 Maintain and manage for native species and warm-water fisheries in periods of adequate water availability (i.e., when normal conveyance of water to water rights holders provides instream flows of sufficient magnitude. Flows will not be specifically provided to sustain these fisheries during periods when water is not released for other conjunctive purposes, due to extensive percolation losses below Peoples Weir and the impact of this excessive water demand on other beneficial uses, including other fishery purposes). Seek, where possible, to develop future conjunctive downstream water uses to support these fisheries at improved levels.
- F-3 Manage and monitor non-native fishes to provide recreational angling, in a manner consistent with: (i) protection of native fish populations, (ii) the broadest public interest, and (iii) the provisions and requirements of applicable State and Federal laws and regulations.

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## **“Exhibit B”**

### **Adaptive Management Procedures to be used in connection with The Kings River Fisheries Management Program**

THESE ADAPTIVE MANAGEMENT PROCEDURES have been developed by and between the Kings River Water Association (the "Association"), the Kings River Conservation District (the "District"), and the State of California, represented by and through the Department of Fish and Game (the "Department"), which are jointly referred to hereinafter as the "Parties" and individually as a "Party." These Adaptive Management Procedures have been developed with reference to the following facts, findings and provisions, all of which are a material part hereof, for the purpose of implementing a comprehensive program to enhance and maintain the fish and wildlife resources associated with the Kings River referred to as the "Kings River Fisheries Management Program" (the "Program"). These Adaptive Management Procedures will initially be employed to implement and manage the Program as described in that certain Framework Agreement between the Parties dated as of May 28, 1999 (the "Framework Agreement") to which these Adaptive Management Procedures are attached; provided, that it is the intent of the Parties that these Adaptive Management Procedures will be employed to implement and manage the Program as it may be modified over time.

#### **STATEMENT OF PURPOSE:**

As duly appointed representatives of the public interests in the Kings River and Pine Flat Reservoir, the Parties have developed these Adaptive Management Procedures and the Program in order to (i) advance what they have agreed to be the most reasonable mix of ongoing beneficial uses of Kings River water, (ii) comply with all applicable laws and regulations associated with the use of Kings River water, (iii) fully conserve the public trust in the fish, wildlife and water resources associated with the Kings River, (iv) protect individual property and water rights, and (v) assure the economic and aesthetic well-being of the Kings River service area and, to applicable extent, the State. Therefore, the Parties have committed to advance, participate in, implement and defend the Program as implemented and managed in accordance with these Adaptive Management Procedures.

These Adaptive Management Procedures are intended to establish a framework for future adaptive management of the lower Kings River, and for cooperation among the Parties, the public and the California State Water Resources Control Board (the "SWRCB"). The Program, as described in the Framework Agreement, is intended to provide immediate benefits to the fish and wildlife resources of the Kings River while also instituting a definitive process utilizing these Adaptive Management Procedures to pursue additional improvements over time. An important aspect of the Program will be ongoing dialogue and discussion between representatives of the Department, the Association and the District. Through that dialogue and discussion, elements might be added, deleted, modified or refined based on new information developed and/or as circumstances warrant. These Adaptive Management Procedures include the procedures for conducting that ongoing dialogue and discussion.

#### **ADAPTIVE MANAGEMENT PROCEDURES:**

##### **I. Mutual Values:**

In connection with the implementation and management of the Program in accordance with these Adaptive Management Procedures, the Parties will conform their actions to the following mutual values:

a. The utmost value is placed on the development of valid scientific and technical information, and the use and incorporation of that information in the processes of developing and implementing all aspects of the Program and making associated operational decisions.

b. The Program will be implemented and managed using appropriate scientific methods, conducted by qualified personnel, and to maintain the highest of professional ethics in developing and advancing scientific information and conclusions.

c. The Parties mutually acknowledge each other's legitimate interests in the Kings River.

d. The highest goal of the Program and these Adaptive Management Procedures is the cooperative pursuit of the most reasonable mix of uses of the limited Kings River water resource, recognizing: (i) the longstanding and vested water rights of the historic users of that resource, (ii) the desirability of maintaining recreational fisheries in Pine Flat Reservoir and in the Kings River below Pine Flat Dam, (iii) the desirability of maintaining the Kings River as a multi-species aquatic resource, (iv) the practical, operational and economic limitations on the Parties and those they represent, and (v) the importance of the Kings River to the local, state and national economies. The Program will be pursued utilizing conjunctive water use and re-use whenever reasonable, prudent and feasible.

e. The Parties mutually accept and represent the implementation and management of the Program in accordance with these Adaptive Management Procedures to constitute full legal compliance with all laws and regulations of the United States of America and the State of California, and more specifically, to represent appropriate conservation of the public trust in the fishery resources of the lower Kings River and Pine Flat Reservoir.

f. The Program is mutually held by the Parties to provide net overall enhancement of the trout fisheries of Pine Flat Reservoir and the lower Kings River. As such, additional or improved features which may be added to the Program as initially described in the Framework Agreement in the future, are considered as non-obligatory enhancement measures, and their incorporation will depend on the development of mutually acceptable conjunctive water uses or other mutually agreed features.

g. The Parties believe that, whenever practical, real-time management should take precedence over prior agreed-to measures, as may be needed to react to immediate threats to the fishery or other emergency situations in a manner consistent with the goals of the Program. For purposes of these Adaptive Management Procedures, "real-time management" refers to specific actions and activities undertaken in response to specific events or as unique circumstances dictate, rather than on a programmatic or long-term basis. The Parties also understand that real-time management is not always practical, especially when divergent interests attempt to allocate scarce water resources during emergencies. Nevertheless, the Parties will, in good faith, pursue efforts to engage in real-time management using the best available science and technology in connection with the Program.

h. All Parties must be responsive to unique opportunities and/or hardships that might develop and be prepared to act on them. For example, in wet years, opportunities to import water into the Kings River Service Area for fisheries purposes will be explored and different (higher) flow regimes will be considered. In dry years, relaxation of established standards will be considered if necessary to avoid unreasonable hardships on water users and/or to avoid depletion of cold water resources in Pine Flat Reservoir.

i. The Parties do not intend that fish screening or similar projects will be a part of the Program, and the Department makes no finding that fish screens or similar devices are required at any point of diversion impacted by any element of the Program. The Department prefers to rely on the implementation of the Program to address fisheries values potentially impacted by fish entrainment to the extent practicable. However, to the extent the Department is legally precluded from relinquishing its responsibility to make findings, pursuant to State Fish and Game Code Sections 6100 et. seq., no such responsibility is relinquished hereby.

j. The Program entails a certain degree of risk. In the event of circumstances which result in the loss of any of the enhancements achieved, the Parties will diligently work to recover any lost improvements in the fishery through prescribed stocking of trout, in kind, and other mutually

agreeable activities. The Parties understand that any environmental enhancement program involves unknowns, and the Parties will commit themselves to working together to address issues as they arise.

k. The Program is intended to be comprehensive in nature. Accordingly, it consists of a number of balanced and interrelated elements, none of which can be modified in isolation. The Parties therefore recognize that the Program is a "package" and that changes in any element thereof could necessitate revision or deletion of other elements.

## II. Procedures:

a. Respecting the uncertainty inherent in the biological responses of fish populations to any program of habitat enhancement, and changing human interests and needs over time, the Parties intend the Program to be implemented on an *adaptive management* basis. As the Program proceeds, the Parties will monitor the physical and biological outcomes to objectively determine if the measures provided are effective, adequate and/or necessary. At any time, changes may be made to any aspect of the Program, subject to mutual agreement of the Parties and in accordance with the procedures contained herein, to reflect available fishery limiting factor analysis, species status information, and real-time management needs. In addition, the Parties will actively and diligently pursue new operational opportunities (such as water exchanges) which have potential to result in further conjunctive, step-wise aquatic resource benefits of mutual benefit.

b. The Parties mutually recognize the need to assure that in the long-term process of making *adaptive management* amendments to the Program (i) the rights of all parties will remain protected, (ii) the reasonably intended benefits will accrue to the fishery, (iii) the maximum efficiency in cost will be practiced and (iv) reasonable beneficial use of the Kings River water resources will continue to occur. To provide such assurance, the Parties will diligently adhere to the procedures outlined herein, for making amendments to the Program and its attendant elements, and for guiding implementation decisions.

c. While it is not the intent of any of the Parties to eliminate any feature of the Program considered by any other Party to be essential for the protection or management of the Kings River fishery or ecosystem, it is probable that some program re-direction may occur in response to new scientific information and/or experience. Fishery enhancement features which are not cost effective may be re-conformed into alternative measures or eliminated altogether, based on a consensus of the Parties, in the manner described herein.

## III. Adaptive Management Decisions:

It is the policy of each of the Parties that voluntary efforts to improve and enhance the fisheries of the Kings River should be ongoing and consistent with the need for reliability and certainty of Kings River water supplies to downstream water rights holders. Although the Parties' joint scientific program has identified numerous opportunities for initially modifying water uses in a manner that benefits the created tail-water trout fisheries and other native fish populations, it cannot be predicted whether existing on and off-stream water uses will continue, or how they may change. The Parties also cannot predict biological responses, legal changes, or human demographic changes which may place changing demands upon the Kings River waters and/or its fish populations. The Parties therefore recognize the need for any long-term program of fishery improvements to be flexible, and to adopt adaptive management strategies whenever practical.

Accordingly, the Parties agree that the Technical Steering Committee (defined below), under the direction of the Executive Policy Committee (also defined below) will engage in regular evaluation of each project or element of the Program to determine whether it should be retained, eliminated, augmented or revised, all with a view to refining the Program to include the most reasonable goals and effective measures practical. The Parties understand that as each new project or element is undertaken, adequate time must be allowed to monitor its results and to assess its impacts. The Parties intend for the process of implementation, followed by monitoring,

followed by evaluation and refinement to be ongoing and a central feature of the Program as implemented in accordance with these Adaptive Management Procedures.

#### IV. Procedures for Adaptive Management:

##### A. Technical Steering Committee (TSC):

###### 1. TSC Membership:

The Parties will participate in a three-member Technical Steering Committee (TSC), composed of one member representing each Party. Each Party will have responsibility to appoint its representative, who must have appropriate qualifications in either Natural Sciences or Engineering. TSC members will also be in a capacity to supervise or direct the work of the technical staff of the Party which they represent. The cost of maintaining each respective member will be borne by the individual appointing authorities. Meetings of the TSC will be conducted as needed, without public notice, at such times and places as the members of the TSC agree. Except as otherwise directed by the Executive Policy Committee (defined below and hereafter referred to as the "ExCom"), meetings need not be open to the public.

###### 2. TSC Role:

a. The TSC will provide oversight regarding all joint science undertaken by the Parties as a part of the Program. While each Party will retain direct supervision authority over its participating member, the TSC will consider and decide, as one body, on the scope, extent, methods and participation regarding needed joint scientific work. The TSC will also review scientific outputs and reports as produced by the scientific staffs of each participating Party, and arrange for outside peer review of results, as appropriate.

b. The TSC will review available science and recommend in writing to the ExCom: (i) changes in the biological monitoring programs, (ii) amendments to the Program, (iii) engineering studies, (iv) budgeting of the biological or technical work, (v) scheduling of expenditures under the Program, (vi) new management concepts, features, or needs, (vii) new constructed features and/or (viii) any other changes, features, or issues requiring ExCom approval.

c. Through the Parties' respective members, the TSC will participate closely with the technical and environmental staffs of the Parties, to assure commonality to the work programs undertaken. It will be the responsibility of each TSC member to communicate to the other TSC members about scientific programs that are ongoing between and among the Parties, and to assure that broad technical and scientific review is appropriately applied, so as to ensure general credibility to the scientific programs and efforts.

d. Upon request of any member of the ExCom, specified TSC members will attend the meetings of the ExCom, and report to said ExCom both verbally and in writing on the progress, problems and results of the scientific programs. The TSC will request, through its members, preparation of formal or informal reports of the technical programs of the respective Parties, to the extent said reports have relevance to the Program.

e. The TSC will comply with work or reporting requirements of the ExCom, and produce such technical support materials as the ExCom may request, as needed for the conduct of the business of either Committee. In the event such requests or assignments represent conflicts between the joint and separate roles and rights of the Parties, the ExCom will be made immediately aware and will decide said issues in accordance with the procedures below.

f. All proceedings and/or writings of the TSC, as well as any written minutes of regularly scheduled meetings, will be regarded as preliminary information and internal memoranda of the separate Parties originally generating the information, until said information becomes finalized and approved in writing by the ExCom, acting as a joint body. None of such materials will be released

by the individual Party or Parties responsible for the generation of the material without ExCom approval. The TSC members, and their accountable technical personnel, will therefore make no voluntary public comments about the results of technical studies or transactions, until they are finalized and approved by the ExCom.

### 3. TSC Decisions and Technical Disagreements:

The TSC will decide, as one body, on recommendations or requests to be made to the ExCom. A full consensus (i.e., one hundred percent consensus) is required to transact the TSC business. All reports, recommendations and other actions of the TSC will require unanimous approval of the three TSC members.

### 4. Separate Supervision of Technical-Scientific Staff:

The Program will have no scientific or technical staff, except through the participation of the personnel of the respective Parties or as the Ex Com unanimously agrees. As such, each Party will retain separate and independent supervision and direction of its respective personnel, and will not be obligated in any way to compromise said supervision on behalf of any TSC or other joint action. Neither a Party nor the TSC will possess authority to supervise, assign, schedule, train, admonish, direct, re-direct, correct or otherwise affect the work of any other individual Party's personnel, regardless of TSC representation. As such, no liability for said personnel or its direction is to be shared as a product of these Adaptive Management Procedures.

## B. Executive Policy Committee (ExCom):

### 1. ExCom Membership:

The Parties agree to participate in the ExCom. Each Party will be allowed one member of the ExCom, to consist of a Managerial-level person, designated by each respective Party. In most cases, these would consist of the Regional Manager, representing the Department; the Watermaster or Assistant Watermaster of the Association; and the General Manager or Assistant General Manager of the District.

The Parties acknowledge that they cannot delegate general authority to their respective ExCom members to bind the Parties on decisions made by the ExCom until each decision is reviewed by such Party. Therefore, each appointing Party retains full authority over its respective ExCom member's involvement in ExCom business, and each ExCom member will receive the required authorizations from his/her appointing Party prior to casting a vote on the ExCom. Any Party may replace its ExCom member, or require advance approval of any vote to be cast by said member. The cost of supporting each Party's participant will be borne by the individual appointing Party.

### 2. ExCom Decisions:

a. All decisions of the ExCom will be by full consensus (i.e., one hundred percent consensus among the voting Parties and entities). This creates a veto power for each voting member, which is agreed to be necessary to encourage and preserve partnership among the Parties. At the request of any member, any decision may be reasonably continued to enable that member an opportunity to seek direction from his or her appointing authority, prior to casting a vote. In the event of emergency decisions, all parties will expedite such continuations in good faith, to prevent damage to any Party or individual, or to the fishery.

b. In the event the ExCom cannot reach a full consensus on any issue, it has the following options: (i) not decide the issue, or (ii) continue the issue, to allow additional information to be developed, or (iii) change or amend the proposal or issue. If none of the foregoing options results in full consensus, the Parties will jointly engage a mutually agreed upon mediator in a good faith effort to achieve consensus.

### 3. Roles of the ExCom:

a. The ExCom will be the only appropriate authority to review and adopt proposed amendments either to these Adaptive Management Procedures or to any other element of the Program. The ExCom will review proposed amendments and make decisions whether to adopt, modify, or reject said amendments. On elements previously approved by the SWRCB, the SWRCB will be consulted prior to making amendments or modifications, and any required SWRCB approvals will be diligently pursued. However, the ExCom may not undertake any amendment which is inconsistent with any substantive recommendation made by the TSC in the absence of overriding factors specifically described by the ExCom. This is intended to assure the professional-scientific fidelity and credibility of the Program. The ExCom may initiate amendments, by requesting the TSC to develop and propose them in technically sound form. Similarly, any individual Party may initiate amendments through its TSC member directly.

b. The ExCom will be the final decision and approval authority for any expenditures of moneys made available for use in the Program. Proposals for expenditures may originate from any source. The Parties anticipate that all such proposals will be evaluated as part of an operations planning process to occur each year with public participation. Any Party or member of the public will be permitted to advance proposals for inclusion in such planning process. Prior to consideration by the ExCom, all proposals will be evaluated by the TSC. ExCom consideration of such proposals will be based on the best scientific and technical information available at the time, in balance with the public interest, as may be determined by the ExCom. Any proposal advanced as a part of the annual planning process will include (i) a description of the intended action, (ii) the expected benefits and the timetable for the accrual of said benefits, (iii) an analysis of alternative actions, and (iv) the most precise estimate of the cost of the proposal available at the time. Upon receipt of a proposal, the ExCom may consider alternative approaches, different timing, and various funding options. It may accept or reject any proposal, provided that if the proposal is for a project or activity previously approved by the SWRCB, the ExCom may not reject the proposal outright absent first obtaining approval of the SWRCB, and must instead seek satisfactory revision of such proposal consistent with the applicable SWRCB approval.

c. The ExCom will be the final approval authority for amendments to the goals for the Program; however, the ExCom may not undertake any such amendment or restructuring of said goals which are inconsistent with any substantive recommendation made by the TSC in the absence of overriding factors specifically described by the ExCom. This is intended to assure the professional-scientific fidelity and credibility of the adopted goals. However, the ExCom may initiate amendments, by requesting the TSC to develop and propose them in technically sound form. Similarly, any Party may initiate amendments through its TSC member directly. On features previously approved by the SWRCB, the SWRCB will be consulted prior to making amendments or modifications, and any required SWRCB approvals will be diligently pursued.

d. The ExCom will direct the TSC's actions, and will receive any and all TSC-endorsed work products, reports and recommendations. The ExCom will hold the TSC jointly accountable to meet deadlines and to provide the materials and reports requested. The ExCom members will exercise their separate authorities, as needed, to hold their individual TSC appointees and technical support personnel accountable for timely completion of the ExCom's assignments.

e. The handling of scientific and technical information and products will be considered sensitive, and be undertaken in the most professional, ethical manner possible by all Parties. The ExCom will be the sole dispensary of technical information which it requests from the TSC, or which is produced by the TSC operating as a committee. All technical materials and/or information will be regarded as draft and preliminary, prior to ExCom approval. The ExCom or its members will not suppress approval of technically valid or "best-available" information, if said information is a contributing part of any interpretation of the needs of the fishery resource, or if it represents any reasonably available remedy to a perceived or acknowledged fishery problem. Conversely, but consistent with all applicable laws, the ExCom will not dispense or provide to the public any technical product which has been rejected by the TSC, as either preliminary, incomplete, inaccurate, or misleading. Regarding decisions to dispense ExCom-requested

technical information, the ExCom or its members have the following options: (i) approve and dispense the information, (ii) request additional supporting information, (iii) return the product to the TSC for reconsideration, or (iv) release the products or information, with an accompanying ExCom statement regarding its limitations. All California Public Records Act requests or Federal Freedom of Information Act requests must be addressed to individual ExCom members (persons), acting through the Parties' separate jurisdictions. For this purpose, the ExCom will not be regarded as a governmental entity. The TSC information and other ExCom materials will be released in accordance with any and all pertinent statutes and doctrines of law.

f. It is the mutual desire of the Parties to involve members of the public in the implementation and development of features of the Program. Therefore, the ExCom will engage in public awareness and education activities relative to the Program and provide regular opportunities for representatives of affected sectors of the public to propose, review and comment regarding all relevant aspects of the Program and its implementation. All meetings of the ExCom will be open to the public, and members of the public will be provided an opportunity to address the ExCom at regular intervals on issues within the jurisdiction of the ExCom. The ExCom will be the primary public liaison for the Program, and will therefore convene noticed public meetings as often as necessary, but at least once per calendar year, for the purpose of maintaining contact and communication with the interested public. In the notice of said meetings, the ExCom may elect to accept public comments and input, or may designate the meetings informational, at which only public questions will be received and responded to. In either case, the ExCom will make every effort to record the public input accurately and to take appropriate actions of record, based on any received information. All such ExCom meetings will be conducted substantially in accordance with meeting notices.

The ExCom or its members may elect to contact the general public at large, or any of the separate and particular entities comprising said public, in order to provide or gather information. This may be through meetings, questionnaires, letters, or other media of the ExCom's choosing. Such queries or presentations will be the result of formal ExCom decisions, and the results will be reported to the public at the next subsequent ExCom meeting.

The ExCom may request the TSC members, or others, to attend any noticed public meeting for the purpose of providing clarification and information, or to collect public input, as may be needed in TSC direction.

g. The ExCom will maintain a liaison with the staff and/or appointees of the SWRCB for the purpose of informing them of the progress and performance of the Program. The ExCom will be responsive to requests for information made by the SWRCB or its staff, and will be accountable to meet any and all deadlines for such information, as the SWRCB may impose.

h. The ExCom will be the seat of resolution of any and all disputes among the Parties, which will be undertaken in accordance with Section IV.B.2.

#### 4. ExCom Regular Meetings:

In addition to the meetings held for purposes of receiving public input described in Section IV.3, the ExCom will meet as needed, but not less than three times per calendar year, in public regular session, to consider proposals from the TSC, or to consider actions recommended by the public. The ExCom may elect or appoint an executive officer, who may be an ExCom member or a mutually agreed designee. Said officer will assist the ExCom by preparing agendas, noticing meetings, arranging locations and dates, conducting meetings, maintaining a record of proceedings, overseeing preparation of Executive Summary information by the TSC or its members, and performing other duties as the ExCom may require.

## 5. ExCom Members' Joint and Separate Rights:

ExCom members, by their required qualifications will have acknowledged combined roles: (i) The role of ExCom members, and (ii) the role as managers of the individual Parties. These Adaptive Management Procedures make no requirement or supposition that any assignment or appointment to any committee associated with the Program, will impose undue limitations upon the role of Parties in managing their separate interests. The Parties' individual rights to obligate their managers and/or personnel to particular positions or policies remain unabridged by their participation in the Program or these Adaptive Management Procedures. All rights of the separate Parties are hereby retained.

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**Exhibit "C"**

**Kings River Fish Flow Requirements  
and Division of Flow Downstream  
(in cubic feet per second)**

Season	Total Flow at Piedra	Minimum Flow in Dennis Cut	Minimum Flow to Fresno Weir	Water Divertable in China Slough	Required Flow Over Fresno Weir
Oct 1 - Nov. 15	100	5	95	10	40
Nov. 16 - March 31	100	5	95	5	45
April 1 - Sept. 30	100	5	95	15	35

The Total Flow at Piedra is the "Kings River For Distribution" as published in the Kings River Water Association Watermaster Report. At least 50 cfs of the Total Flow at Piedra shall originate at Pine Flat Dam. This flow may be altered as necessary to facilitate monitoring, construction of Program features, flood control activities of the Corps of Engineers, or other actions of overriding importance approved by the Executive Policy Committee. This flow may also be altered on an adaptive management basis by the Executive Policy Committee to address temperature considerations, provided that increases in Total Flow at Piedra to provide desired temperatures will be accompanied by offsetting reductions in Total Flow at Piedra, or other accommodations as determined by the Executive Policy Committee, at the earliest practicable date.

The Minimum Flow in Dennis Cut is for instream fishery purposes and shall be at least 5 cfs at all times. None of that flow will be diverted in the Alta Canal. When diversions into Dennis Cut exceed 5 cfs and as a result the Minimum Flow to Fresno Weir would be less than 95 cfs, there shall be an additional release from Pine Flat Dam to ensure that the Minimum Flow to Fresno Weir is maintained at 95 cfs.

The Minimum Flow to Fresno Weir is the Total Flow at Piedra less diversions above Fresno Weir.

The Water Divertable in China Slough is the maximum portion of the Minimum Flow to Fresno Weir that may be diverted in China Slough (all of which is diverted via the Consolidated Canal). Any diversions into China Slough in excess of the Water Divertable in China Slough will not be included in or credited against the Required Flow Over Fresno Weir.

The Required Flow Over Fresno Weir is the minimum portion of the Minimum Flow to Fresno Weir that should arrive at the Weir and not be diverted in the Fresno Canal, Consolidated Canal or in China Slough. Appropriate flow measurements shall be made to verify that the Required Flow Over Fresno Weir is present. Unavoidable measurement errors within accepted industry standards will not be deemed violations of the standards described above. Any short-term operational deviation affecting Required Flow Over Fresno Weir will be reviewed by the Executive Policy Committee as soon as reasonably possible after the occurrence and determined to either be reasonable under the applicable circumstances (and therefore not a violation of the standards described above) or unreasonable (in which case remedial measures will be developed where appropriate).

Rates of change of flow at low river stages shall be governed by Section 1(g) of the Framework Agreement to which this Exhibit C is attached.

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## Exhibit "D"

### Kings River Fish Flow Goals For Implementation by October 1, 2005

By October 1, 2005, and subject to Section 1(e) of the Framework Agreement to which this Exhibit D is attached, the members of the Association will diligently endeavor to increase the Minimum Flow to Fresno Weir (as defined in Exhibit C) as follows, subject to any adjustments by the Executive Policy Committee implemented pursuant to the Adaptive Management Procedures:

1. For each water year (defined as October 1 through September 30) that Kings River runoff exceeds 2,100,000 acre feet, the Minimum Flow to Fresno Weir will be at least 250 cubic feet per second for one "enhanced minimum flow period" beginning on the date the Minimum Flow to Fresno Weir would otherwise have fallen below 250 cubic feet per second through the next March 31.
2. For each water year (defined as October 1 through September 30) that Kings River runoff exceeds 1,555,000 acre feet, but is less than 2,100,000 acre feet, the Minimum Flow to Fresno Weir will be at least 130 cubic feet per second for one "enhanced minimum flow period" beginning on the date the Minimum Flow to Fresno Weir would otherwise have fallen below 130 cubic feet per second through the next March 31.
3. For each water year (defined as October 1 through September 30) that Kings River runoff is 1,555,000 acre feet or less, instream flows for fisheries management will be governed by Exhibit C.
4. Each "enhanced minimum flow period" described in Sections 1 and 2 may be before, during, or within five years after the water year in which the runoff requiring the applicable flows occurs.
5. Notwithstanding the provisions of Sections 1 and 2, the Minimum Flow to Fresno Weir resulting from a water year described in Section 2 may be increased during an enhanced minimum flow period from 130 cubic feet per second by up to 60 cubic feet per second at the election of the Kings River Water Association. Provided such increase is maintained for the entire enhanced minimum flow period, the members of the Association will receive a "credit" for the amount of the increase which may be applied against the flows required during an enhanced minimum flow period described in Section 1 of this Exhibit D. By way of example, if the Kings River Water Association elected to increase the Minimum Flow to Fresno Weir from 130 cubic feet per second to 175 cubic feet per second in a minimum flow period described in Section 2, it would be entitled to reduce Minimum Flow to Fresno Weir from 250 cubic feet per second to 205 cubic feet per second during the next minimum flow period described in Section 1.
6. The minimum portion of the Total Flow at Piedra (as defined in Exhibit C) which will originate at Pine Flat Dam during enhanced minimum flow periods described in Sections 1 and 2 of this Exhibit D, and other permitted distributions and diversions of the flows provided for in Sections 1 and 2, will be determined by the Executive Policy Committee. All such determinations will be made before any of the enhanced flows described in Sections 1 or 2 will be provided by members of the Association, recognizing that such determinations must accommodate the program(s) utilized by the members of the Association to develop the water to provide the enhanced flows described in Sections 1 and 2.
7. Without limiting the powers of the Executive Policy Committee to adjust flows under the Program, the flows described in Sections 1 and 2 may be altered as necessary to facilitate monitoring, construction of Program features, flood control activities of the Corps of Engineers, or other considerations of overriding importance approved by the Executive Policy Committee. Those flow may also be altered on an adaptive

management basis by the Executive Policy Committee to address temperature considerations, provided that any increases in Total Flow at Piedra or Minimum Flow to Fresno Weir to provide desired temperatures will be accompanied by offsetting reductions in Total Flow at Piedra and/or Minimum Flow to Fresno Weir, as appropriate, or other accommodations as determined by the Executive Policy Committee, at the earliest practicable date.

8. Rates of change of flow at low river stages will be governed by Section 1(g) of the Framework Agreement to which this Exhibit D is attached.

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